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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS:

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Progress report submitted by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Commission resolution 1996/14

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Introduction

1. At its fifty-first session, the Commission on Human Rights, aware of the growing practice of the dumping in African and other developing countries by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes, adopted resolution 1995/81 in which it noted with grave concern that the increasing rate of illicit dumping of toxic and dangerous products and wastes in developing countries continues adversely to affect the human rights to life and health of individuals in those countries, and decided to appoint, for a three-year period, a special rapporteur with a mandate to:

(a) Investigate and examine the effects of the illicit dumping of toxic and dangerous products and wastes in African and other developing countries on the enjoyment of human rights, in particular on the human rights to life and health of everyone;

(b) Investigate, monitor, examine and receive communications and gather information on the illicit traffic and dumping of toxic and dangerous products and wastes in African and other developing countries;

(c) Make recommendations and proposals on adequate measures to control, reduce and eradicate the illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries;

(d) Produce annually a list of the countries and transnational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in African and other developing countries and a census of human persons killed, maimed or otherwise injured in the developing countries through this heinous act.

The Commission requested the Special Rapporteur to submit her findings, including the list referred to in (d) above, to the Commission at its fifty-second session.

2. By its decision 1995/288 of 25 July 1995, the Economic and Social Council endorsed Commission resolution 1995/81.

3. The Chairman of the fifty-first session of the Commission on Human Rights, after consultation with the members of the Bureau, appointed Mrs. Fatma Zohra Ksentini (Algeria) as Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

4. In its resolution, the Commission urged the international community to give the necessary support to developing countries, upon their request, in their efforts to implement the provisions of existing international and regional instruments governing the transboundary movement and dumping of toxic and dangerous products and wastes in order to protect and promote the human rights to life and good health of all. The Commission requested the Secretary-General to establish in the Centre for Human Rights a focal unit with the specific task of following up on the findings of the Special Rapporteur and other issues related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the

enjoyment of human rights. Furthermore, it urged all Governments, specialized agencies and non-governmental organizations to cooperate fully with the Special Rapporteur, in particular by providing information on the movement and dumping of toxic and dangerous products and wastes.

5. In accordance with resolution 1995/81, the Special Rapporteur submitted a preliminary report (E/CN.4/1996/17).

6. In its resolution 1996/14, the Commission took note of the preliminary report of the Special Rapporteur and in particular her preliminary conclusions and recommendations. The Commission reaffirmed that illicit traffic and dumping of toxic and dangerous products and wastes constituted a serious threat to the human rights of life and good health of every individual. It requested the Special Rapporteur to continue to undertake a global, multidisciplinary and comprehensive study of the phenomena and to include in her next report information on countries and enterprises engaged in the illicit traffic, as well as information on persons killed, maimed or injured in developing countries through this heinous act.

7. The Special Rapporteur submits the present progress report in accordance with resolution 1996/14.

I. MANDATE, WORKING METHODS AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Mandate

8. In her preliminary report, the Special Rapporteur presented her reflections upon and understanding of the mandate in general and the standards to which she will refer in carrying out her mandate. She indicated that the mandate established by Commission resolution 1995/81 is consistent with the special thematic procedures; the methodology applied would be similar to that followed by other thematic rapporteurs.

9. The Special Rapporteur considered that her mandate has three main components. The first consists in conducting a general survey of issues involving the human rights of the victims, with special emphasis on difficulties encountered by African and other developing countries, and in making recommendations and proposals on adequate measures to control, reduce and eradicate the problem. The second component consists in identifying, investigating and monitoring actual situations, specific incidents and individual cases, including allegations which may be forwarded to the Special Rapporteur. The third consists in producing annually a list of countries and transnational corporations engaged in the illicit traffic of toxic and dangerous products and wastes to developing countries.

10. In its resolution 1996/14, the Commission confirmed the three components of her mandate by requesting the Special Rapporteur:

(a) To continue to undertake a global, multidisciplinary and comprehensive study of existing problems and solutions to illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries, with a view to making recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena (para. 9);

(b) To include in her report to the Commission information on countries and enterprises, including transnational corporations, engaged in the illicit movement and dumping of toxic and dangerous products and wastes in African and other developing countries (para. 10);

(c) To include information on persons killed, maimed or otherwise injured in developing countries through this heinous act (para. 11).

B. Working methods

11. In her preliminary report, the Special Rapporteur indicated the method that would be followed in order to gather the information necessary for the fulfilment of her mandate. She also described the procedure to be adopted for considering communications in accordance with the practice developed in other thematic procedures.

12. Accordingly, on 30 August 1995, the Secretary-General sent a note verbale to Governments and letters to specialized agencies and non-governmental organizations transmitting the Special Rapporteur's request for relevant information in accordance with paragraph 11 of resolution 1995/81.

13. At the time of submission of the present report, replies had been received from the following Governments: Angola, Germany, Jordan, Nigeria, Philippines, Slovakia, United Kingdom of Great Britain and Northern Ireland. Responses were received from the following United Nations bodies and specialized agencies: Department for Policy Coordination and Sustainable Development, Department for Economic and Social Information and Policy Analysis, United Nations Conference on Trade and Development, United Nations Environment Programme, United Nations University, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, World Health Organization, World Bank, United Nations Industrial Development Organization, International Atomic Energy Agency.

14. The following intergovernmental organizations also replied: League of Arab States, Organization for Economic Cooperation and Development.

15. Responses were received from the following non-governmental organizations: Canadian Association of Physicians for the Environment; Centro de Estudios Ambientales; Disaster Mitigation Institute; Greenpeace; Human Rights Advocates; International Confederation of Free Trade Unions; International Federation of Chemical, Energy and General Workers' Unions; International Indian Treaty Council; International Transport Workers' Federation; Laka Foundation; National Aboriginal and Islander Legal Service Secretariat; National Conservation Strategy (Coordinating) Agency; Natural Heritage Institute; Pesticide Action Network North America; Re-visioning New Mexico; Servicio Paz y Justicia en América Latina; Sierra Club Legal Defense Fund, Inc.; Students of TAO USA; World Survival Foundation, Inc.

16. The Secretariat of the Basel Convention provided the Special Rapporteur with important documentation as well as information on the implementation of the 1989 Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

17. On the basis of the information gathered from various sources, a summary of cases and incidents has been established. The Special Rapporteur received numerous reports and allegations concerning her mandate. Some of them referred to the issue of environmental degradation leading to violations of human rights. Others contained particular cases of alleged violations of human rights in connection with the illicit movement and dumping of toxic and dangerous products and wastes. The information was processed and the allegations sent to the Governments concerned deal exclusively with this phenomenon.

18. Given the specific nature of such communications, the Special Rapporteur decided to send the allegations both to the countries from which the illicit traffic allegedly originated and to targeted or victimized countries. In some cases, other Governments could be concerned (transit countries; country of origin of a transnational corporation).

19. General comments received from Governments are summarized in chapter II of the present report. Communications received by the Special Rapporteur are contained in chapter IV. Government replies will be reflected in an addendum to the present report.

20. The Special Rapporteur is aware of the fact that communications were addressed to Governments late in 1996 and that the Governments concerned were asked to provide a reply within a very short deadline. This late transmittal is principally due to staff movement linked to the reassignment of certain thematic procedures, including the mandate of the Special Rapporteur on toxic wastes, to another area of the secretariat of the Centre for Human Rights, in the framework of the transitional phase now in place pending the entry into force of the new structure of the Centre. However, the Special Rapporteur will reflect any other replies received after the submission of the present report in her next report to the fifty-fourth session of the Commission.

C. Activities

21. In her preliminary report, the Special Rapporteur indicated that she intends to establish a dialogue with Governments concerning allegations and prospective field missions with a view to assisting the Governments concerned in finding appropriate solutions to deal with the illicit traffic and dumping of toxic and dangerous products and wastes, especially in African and other developing countries. Accordingly, she will endeavour to undertake missions *in situ* to the five geopolitical regions to investigate allegations and to supplement information required to fulfil her mandate.

22. On 26 July 1996 the Special Rapporteur held at her own expense consultations with the Centre for Human Rights and discussed with the secretariat all the elements related to her mandate, including the possibility of undertaking missions *in situ* to some countries which were identified. In September, the Special Rapporteur was informed that the financial constraints facing the Centre for Human Rights could not permit field missions.

23. The Special Rapporteur visited Geneva from 10 to 16 December 1996 for consultations with the secretariat of the Centre for Human Rights and the Secretariat of the Basel Convention (ISBC). She also took this opportunity to hold consultations with some Geneva-based intergovernmental and non-governmental organizations on issues related to her mandate.

24. On 16 December 1996 the Special Rapporteur concluded her consultations with the secretariat of the Centre for Human Rights, reiterating her interest in undertaking field missions, to be included in her programme of work for 1997. Africa, being the main focus of her mandate, should be considered as a priority even though, considering recent trends in movements of toxic wastes, Eastern Europe would be equally advisable. Alternatively, the Special Rapporteur suggested Latin America or one of the countries where toxic wastes originate.

25. Consistent with resolution 1996/14 calling for consultation and cooperation with all relevant bodies, in particular the ISBC, on 13 December 1996 the Special Rapporteur met the Executive Secretary of the ISBC. During the consultations two main trends emerged: a certain degree of reluctance on behalf of countries to rely on the mechanism established by the Basel Convention concerning transmission of information related to accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them (art. 13.3 (f)) and a lack of active participation on behalf of industrializing countries. The Special Rapporteur showed her interest in the projects developed by the ISBC in the field of technical assistance as well as in the role that ISBC plays as a clearing-house mechanism.

II. SUMMARY OF GENERAL COMMENTS RECEIVED FROM GOVERNMENTS

26. Angola. In its reply the Government of Angola confirmed its interest in the Commission resolution, underlined the difficulties faced in controlling its maritime and riverine coasts which risk being transformed into dumping sites for toxic wastes, and finally requested technical assistance in order to implement an environmentally sound policy.

27. Germany. In its reply, the Government of Germany stated that since July 1995 Germany has been a Contracting Party to the Basel Convention. The Act implementing the Basel Convention, inter alia, stresses the duty to reimport illegal/unauthorized or impracticable shipments of hazardous wastes. Waste exporters required to notify must ensure financial security for their waste shipments and contribute to a solidarity fund which pays whenever a solvent operator with a duty to reimport cannot be found in time. A special unit - the Federal Environment Agency - has been set up to deal with transit permits and information exchange. Also, a special procedure has been established to notify, which ensures that the responsible authorities are informed of the notifications made; furthermore, transactions arranging the movements of wastes are subject to official authorization. Infringements of the above-mentioned laws are punished by the German Penal Code with up to 10 years' imprisonment.

28. Jordan. In its reply, the Government of Jordan reiterated its interest in protecting the environment as well as the safety and health of its citizens. It recalled some of the measures adopted in order to achieve this end such as the prohibition against dumping of foreign hazardous wastes within its borders as well as the attempts made to manage hazardous wastes in an environmentally sound manner. Finally, it called for the international community to support developing countries in the implementation of international and regional instruments on toxic wastes.

29. Nigeria. In its reply, the Government of Nigeria stressed the active role it has played in support of resolution 1995/81 as well as its strong belief that the illicit dumping of toxic wastes is a violation of the right to life and health. In fact, Nigeria was one of the African countries that suffered and still suffers from the illegal dumping of toxic and hazardous wastes, due to its limited experience and knowledge in dealing with hazardous and toxic wastes, most of which are deliberately labelled raw materials for certain industries. Some examples were given: in 1993/94, about 15 toxic chemicals and waste alerts were received from the Nigerian Dumpwatch Network; out of these, about 12 were purported requests by alleged Nigerian businessmen, while 3 were deliberate efforts by foreign companies to dump toxic wastes in the country. Reportedly, the new method employed by the latter group is to disguise toxic chemicals and waste products as raw materials that come under various labels. Furthermore, efforts have apparently also been made by toxic waste traders to dump in Nigeria milk products contaminated with radioactive chemicals. The Government of Nigeria made the following suggestions to control and eliminate the illicit dumping of toxic wastes:

(a) The Special Rapporteur should produce and circulate annually a list of the countries and multinational corporations engaged in the illicit dumping;

(b) There should be a study of the health effects of the illegal dumping of toxic wastes in developing countries;

(c) The Special Rapporteur should explore the possibility of the elaboration of a universal declaration on the effects of illicit dumping of toxic wastes on the enjoyment of human rights;

(d) The Special Raporteur should work closely with the World Health Organization, the International Atomic Energy Agency, the Organization of African Unity, the Secretariat of the Bamako Convention, hospitals and environment agencies in developing countries to gather data on illegal waste dumping, an action which is aimed at embarrassing the "dumpers" by focusing international attention on their activities;

(e) All States should be encouraged to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping, as stated in the Vienna Declaration and Programme of Action;

(f) All States should become parties to the Basel Convention;

(g) There should be adequate funding for existing international monitoring mechanisms to function effectively; and

(h) A focal unit in the Centre for Human Rights to follow up the findings of the Special Rapporteur should be established.

Nigeria finally reiterated its support for the Special Rapporteur in discharging her mandate.

30. Philippines. The Philippine Government, recognizing the issue of the illegal movement and dumping of toxic and dangerous products and wastes in

developing countries, passed a law in 1990 known as the Republic Act 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act) which regulates the import, processing, distribution, use and disposal of toxic substances through a notification process for new chemicals and the issuance of Chemical Control Orders for chemicals that pose unreasonable risks to human health and the environment. The import of hazardous wastes for disposal is also prohibited in the Philippines, as is the import of recyclable materials containing hazardous substances unless complying with the requirements set out by the Department of Environment and Natural Resources which works closely with other relevant government agencies such as the Bureau of Customs. No occurrences of illegal movement and dumping of toxic and dangerous products and wastes in the Philippines were reported by the Government.

31. Slovakia. In its reply, the Government of Slovakia expressed concern for the consequences of the illegal treatment of dangerous wastes and recalled some of the measures it has adopted to protect the environment as well as the safety and health of citizens, among them: the Act on Waste No. 238/1991 which prohibits the import of toxic waste with the purpose of its elimination and conditions the import of waste for recycling on the consent of the State administration organ; the Act on the State Administration No. 494/191 with regard to waste which controls waste disposal and includes a classification of waste; the Directive on Record-keeping of Waste No. 605/1992; the Directive on Treatment of Wastes No. 606/1992; the resolution "Strategy, Principles and Priorities of the State Environmental Policy"; and the Waste Disposal Programme which determines objectives and measures for the disposal of both waste and dangerous waste. Furthermore, Slovakia is a State party to the Basel Convention and is in charge of a subregional training centre for the implementation of the Basel Convention for Central and Eastern Europe.

32. United Kingdom of Great Britain and Northern Ireland. In its reply, the United Kingdom Government referred to article 13 of the Basel Convention, which calls for the transmission of data relating to transboundary movements of waste, to inform the Special Rapporteur of the fact that it was in the process of preparing a document which would include any reported cases of illegal traffic in this regard.

III. REVIEW OF INFORMATION PROVIDED BY STATES PARTIES TO THE BASEL CONVENTION

33. According to article 13.3 (f) of the Basel Convention, "The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under article 15, before the end of each calendar year, a report on the previous calendar year, containing [...] information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them".

34. Information received by the ISBC between May 1992 and March 1994 was provided by the following countries: Argentina, Australia, Austria, Bahamas, Bahrein, Brazil, Canada, China, Cyprus, Czech Republic, Estonia, Finland, India, Iran (Islamic Republic of), Hungary, Latvia, Norway, Saudi Arabia, Sri Lanka, Sweden, Uruguay. In 19 cases out of 21, either no accidents were reported or no information was available. The only two ascertained cases concerned Cyprus and the Islamic Republic of Iran. As for the former, "In Cyprus there was one incident as a consequence of hazardous wastes movement

and their disposal. This incident occurred in 1987, when about a hundred old transformers were imported for breaking up and disposal. These transformers contained PCBs in the form of Askarel [...]. Once the event came to the notice of the Government, an investigating Governmental Committee was established to tackle the problem. The solution adopted was for the contaminated soil material and the contained PCBs to be disposed of in a secure landfill, in properly designed chemical cells". As for Iran, "some accidents in the marine environment" were reported, the last of which - the Captain Sakharof accident - occurred in the Persian Gulf region.

35. More replies were received by the ISBC between July 1994 and July 1995 from the following countries: Argentina, Bahrein, Bangladesh, Brazil, Canada, Chile, China, Cyprus, Czech Republic, Ecuador, Finland, Greece, Hungary, Iran (Islamic Republic of), Malaysia, Mexico, Monaco, Netherlands, Norway, Peru, Republic of Korea, Saudi Arabia, Senegal, Slovakia, Spain, Sri Lanka, Sweden, Trinidad and Tobago, Uruguay. In 27 out of 29 cases, either no incidents were reported or no data were available. The only two cases reported to the ISBC concerned Argentina and Mexico. As for the former, "The illegal disposal of hazardous wastes (cyanide) and acids in the sewers caused several accidental deaths [...]". As for Mexico, accidental spills or gas leakages were reported, none of them causing violations of human rights.

36. Even though article 13.3 (f) of the Basel Convention calls for the transmission of information on accidents occurring during the transboundary movement and disposal of hazardous wastes on behalf of the Parties, reporting of incidents seems to be sporadic, vague in their descriptions and lacking details. From the information received, furthermore, it is extremely difficult to appraise the impact of the incidents both on the environment and on human rights.

IV. REVIEW OF INFORMATION SUBMITTED TO THE SPECIAL RAPPORTEUR

37. Information received by the Special Rapporteur from different sources is summarized below. Replies received from the Governments concerned will be reflected in an addendum to the present report. In most of the cases brought to the Special Rapporteur's attention, alleged violations concern the right to life and health as well as the right to information. Some cases regarding alleged violations of other human rights have also been reported, such as the right to safe and healthy working conditions, the right to form and join trade unions, the right to strike and the right to bargain collectively. Furthermore, some cases involve issues related to racism and discrimination. Certain marginalized groups, women and children were particularly affected.

38. Argentina. In 1993, seven people died as a consequence of toxic gas leaking from the drains in the proximity of a concealed deposit of toxic wastes. A first analysis of the sewage water revealed traces of cyanhidric acid which was either thrown directly into the drains or combined with other substances thus creating the lethal mixture. Reportedly, those responsible for the damages caused have not been identified so far.

39. Australia/Philippines and China. In 1994, Philippine customs officials impounded two 12-metre-long containers of computer waste from Australia. When this type of waste arrives in China, workers strip the cables for copper wire

and the remaining material is either burned or stockpiled. These practices can be dangerous and it is uncertain whether workers are informed about the risks involved.

40. Australia/Indonesia. In 1992, Australia allegedly exported more than 11,000 tonnes of battery scrap to Indonesia where IMLI - the largest battery waste importing plant in Indonesia - burnt it. Apparently, when the plant began operations in the late 1980s, villagers believed it was a wood processing plant. Instead, IMLI burns 60,000 tonnes of lead acid batteries each year, threatening the surrounding environment and the health of the nearby community whose lead levels are between two and three times greater than the acceptable occupational health standards. Apparently, IMLI also dumps its waste slag outside its factory gates. Villagers collect it and smelt it in woks over open fires in their backyards, trying to sell the extracted lead content of the slag. Reportedly, people throughout Java are practising this method of recycling wastes.

41. Australia, Japan, New Zealand, the United Kingdom and the United States/the Philippines. Reportedly, in the first six months of 1993, waste traders from Australia, Japan, New Zealand, the United Kingdom and the United States shipped over 16,000 tonnes of battery scrap to the Philippines, violating a national law (Republic Act No. 6969) banning such toxic waste imports. Australia seems to be one of the top exporters of used lead acid batteries to the Philippines. The vast majority of the waste went to a lead smelter near Manila, Lead Smelter Inc. now Philippines Recyclers Inc. (PRI), a local subsidiary of the United States firm Ramcar Batteries Inc. which, despite emission control devices, is polluting the nearby river and surrounding fields. Battery wastes also find their way to small battery recyclers, like the now defunct Parker Batteries (Manila) or C.C. Unson. Reportedly, workers in these plants usually show high levels of lead in their blood, complain about health problems and seem to be subjected to lead exposure. Some cases were reported of people hospitalized because of lead exposure who had to pay for their own medical expenses. Residents of Patubig in Marilao, Bulacan, allegedly had to move because of the fumes released from the PRI plant. Residents and workers around Inmarflex, a secondary lead smelter in Manila, suffer from severe breathing problems; some of them cough up blood. Workers at Parker Batteries used to work in unventilated rooms wearing no protective clothes and exhibit signs of lead contamination with teeth blackened by years of inhaling lead.

42. Australia/Papua New Guinea. In 1963, Australia granted a mining exploration licence to CRA Exploration (later Copper Pty. Ltd.; after mining started in 1972, the company was registered in the Territory of Papua and New Guinea and renamed Bougainville Copper Ltd. BCL.) to prospect for copper at Panguna in Bougainville. Although some measures were adopted to grant compensation and prevent environmental damage, the situation deteriorated. Landowners started forming associations in defence of their rights; in 1987, a new Paguna Landowners Association emerged, later formalized as the Bougainville Revolutionary Army (BRA), and acts of sabotage, which eventually (1990) led to the closing down of the mine, started. The Police Riot Squad, as well as the Papua New Guinea Defence Force (PNGDF), both sent to deal with the situation, reportedly resorted to brutal and illegal ways to contain the strife. Analogous acts of violence were carried on by BRA units. In 1990, a naval blockade in respect of all goods and services except essential medical supplies was imposed by the Government of Papua New Guinea

around Bougainville. The proclamation of a unilateral declaration of independence and the creation of the Bougainville Interim Government followed; the situation has not yet returned to normal and, even though the naval blockade has been lifted, the population in some areas continues to be deprived of basic requirements and many allegations of serious violations of human rights continue to be reported.

43. Brazil. Reportedly, in 1987, some workers at Tonolli and FAE S.A., two of Brazil's largest lead battery waste importers, quit/were fired from their jobs after their health had failed. Four years later, the lead recycling companies were held responsible for lead poisoning. Emissions of lead and cadmium released by Tonolli may be causing highly elevated levels of lead in the blood of children living nearby. In 1988, FAE was fined for violations of occupational health standards, environmental regulations and problems with the smelter itself. An analogous case is that of Microlite, the largest of the battery smelters in Brazil and part of Saturnia Batteries Enterprise.

44. Canada/the Philippines and Papua New Guinea. In 1996, a mine waste spill created a major environmental disaster in the Philippine province of Marinduque, affecting the Boac River and 700 families. Marcopper Mining Corporation, one of Asia's biggest mining firms which is 40 per cent owned by Canada's Placer Dome Inc., promised to compensate for damages caused and immediately rehabilitate the Boac River. It seems that the mine spill has impacted at least 24 villages and some 4,000 people. Several people have been hospitalized. It seems that more than 10,000 people will be affected if the mine waste kills off marine and land animals on which residents rely for food. The Department of the Environmental and Natural Resources and the affected communities have filed civil and criminal charges against Marcopper for the damage caused. Reportedly, the Porgera gold-mine located in Papua New Guinea's western highlands and operated by Placer Nuigini, a local subsidiary of Placer Dome Inc., dumps 40,000 tonnes of tailings per day into the Strickland-Maiapam River and has no tailings retention facilities. Apparently, the mine dumps rock waste as well as heavy metal sulphides and hydroxides, including ferro-cyanide complexes and Jarrosite, into these rivers at levels up to 3,000 times the normal legal limits. Reportedly, local people, concerned about these levels of contamination, asked the Government to improve pollution monitoring and regulation below the mine. Apparently, the Government replied by extending the exemption the joint venture enjoys in dumping tails.

45. Colombia. Reportedly, in a small area in the south of Santander, people and waters are poisoned with glysofato and other radioactive chemicals. Livestock and crops die. People slowly become incoherent with intense pain, accompanied by auditory, olfactory, oral and vaginal haemorrhaging. Some also suffer from dizziness, vomiting, fainting, partial paralysis, headaches and facial disfigurements. Over 400 individuals are presently bedridden. People living in nearby towns who drink from the same two rivers (River Fonse and River Uripas) are also at risk. Also, people are starving due to the impossibility of growing food as the land has been destroyed by chemicals.

46. France/Brazil. In 1993, the immediate closure of the French transnational corporation Rhône Poulenc's plant in Cubatao was ordered by a judge in order to protect plant workers from further exposure to chemicals. Reportedly, huge quantities of hexachlorobenzene- and pentachlorophenol-contaminated soil were identified at the Rhône Poulenc

facility that apparently had concealed the illegal deposits, which were 7,000 to 15,000 times higher than legal contamination levels. In 1992, one of the plant workers died; results from the worker's autopsy revealed HCH in his lungs.

47. France and the United States/Myanmar. In Myanmar, Total - together with Unocal, a Los Angeles-based oil and gas multinational, and Texaco - seem to collaborate with the Government of Myanmar in an offshore natural gas project; reportedly, Texaco's pipeline will run parallel to a pipeline in the process of being built by Unocal and Total. It seems that in order to construct a pipeline through the rain forest, the army has declared "free-fire zones" in which soldiers are authorized to shoot civilians, including members of the Karen tribe, an indigenous ethnic minority group living near the Thai border whose homeland is the pipeline area. Furthermore, it is reported that indigenous peoples are forced to work on clearing forest areas to prepare them for oil and gas exploration and transportation. All of the victims are thought to be Karen; reportedly, some of them have been evicted from the location of the planned pipeline to areas where means to earn a living are scarce.

48. Germany/Albania. Reportedly, in 1993, 239 tons of hazardous pesticides from Germany, stored in leaking drums, were found at the northern Albanian border, endangering Lake Shkoder and the water supply of large parts of the southern Balkans. The German Government was requested to take it back. Reportedly, in 1994, 450 tonnes of expired pesticides - originally sent to Albania as "humanitarian aid" - returned to Germany after more than three years in Albania, where the badly packaged and leaking containers had posed a threat to the land, water and people in Bajza and Miloti provinces. Some of the waste has since been burnt in German incinerators, and the rest consigned to a waste storage facility.

49. Germany/Egypt. Reportedly, in 1992, Egyptian authorities refused to permit the unloading of a cargo of 950 tonnes of plastic wastes originating in Germany which was to be delivered to Egyptian cement kilns as fuel for their ovens. The waste was combinated with 1.7 per cent lead, other heavy metals and polycyclic aromatic hydrocarbons. If burnt in cement kilns, the toxic fumes would have endangered the health of the local population.

50. Germany/India. Reportedly, the German company Wilhelm Grillo is one of the main exporters to Bharat Zinc Ltd., which has been accused of spreading toxic pollution and thus threatening the health of workers and residents near its Mandideep plant, 23 km outside of Bhopal. Allegedly, Bharat Zinc imports thousands of tons of metal waste from which it reclaims zinc; the rest of the hazardous waste, however, seems to be emitted through the factory smokestack or simply dumped behind the factory. Apparently, the workers in the factory are neither informed of the dangers nor provided with protective clothing.

51. India. Some of the world's most toxic pesticides are reported to be amongst the most widely used insecticides in India, of which 55 per cent are applied to cotton. As a result, babies from the cotton-growing region of Mukteshwar are consuming 24 times the level of DDT designated safe by WHO. Also, all 130 samples of mother's milk taken from the Punjab were contaminated with residues of DDT and HCH; the same for infant formula. The health impacts of pesticide use in India also include accidental and occupational poisonings and deaths.

52. Japan/Malaysia. In 1992, a Japanese joint venture - Asian Rare Earth (ARE) - had to close for environmental reasons and for posing health threats to villagers in Bukit Merah, Malaysia. Eight people, two of whom have since died, filed suit against ARE in 1985 and asked for compensation for the pain and suffering ARE caused the village. The plaintiffs charged that radon gas had escaped from the ARE facility and made many people sick. Increased incidence of leukaemia, infant mortality, congenital defects and increased levels of lead in children's blood were all acknowledged by the judge. In 1992, ARE gained permission to resume operation. Due to widespread public protest, Mitsubishi (which owns 35 per cent of ARE) chose not to resume operation at ARE until a final decision is handed down by the Supreme Court. It is unclear when the decision will be made.

53. Lebanon. In September 1996, the Special Rapporteur received a complaint from a victim who reported that the dumping of toxic wastes in Lebanon resulted in the hospitalization of a man whose family was charged US$ 30,000 for medical treatment.

54. The Netherlands and the United States/India. Reportedly, the Netherlands is one of the main exporters to Bharat Zinc Ltd., accused of spreading toxic pollution and threatening the health of workers and residents near its Mandideep plant (see para. 51 for details).

55. The Netherlands and the United States/Nigeria. The Shell transnational corporation projects (Royal Dutch Shell and Shell Oil USA) seem to pose a threat to the Ogoni people, a community in southern Nigeria: in order to allow non-indigenous residents - employees of Shell - to carry out business ventures without being molested, the 1,050-km^2 region, with a population of 500,000 Ogoni, has been occupied by the police since May 1994. Human rights violations have been reported, in addition to sporadic and discretionary enforcement of environmental regulations: reportedly, unlined toxic waste pits allow pollution to seep into drinking water supplies, thus threatening the right to health of surrounding communities, and calls for compensation from the oil companies are often met with claims of sabotage or payment of compensation to the Government of which the local villagers see little.

56. Saudi Arabia/the Philippines. Reportedly, in the last three years Saudi Arabia has emerged as one of the major exporters of scrap batteries to the Philippines. Figures from 1994 to April 1996 indicate exports totalling 9,440 tons.

57. Singapore. Reportedly, in the last three years Singapore has emerged as one of the major exporters of drained or undrained scrap batteries to the Philippines. Figures from 1994 to April 1996 indicate exports totalling 9,280 tons.

58. Thailand. In 1991, a massive explosion and fire occurred at the Klong Tooey port in Bangkok, in an area where imported and abandoned hazardous chemicals and wastes had been stored for years. After the fire, Thai government authorities allegedly relocated the toxic residues to a dumpsite in a military area in Kanchanaburi. The toxic waste is buried approximately 4 m underground and the entire 3,800-m^2 area is covered with cement. Residents of Kanchanaburi, who live near the dumpsite, report skin rashes after bathing with well water and have traced the source to leaking toxic chemicals from

the dumpsite. Reportedly, the waste leaks. After local residents tried to pressure the Government to take action, authorities announced that the site would be upgraded.

59. Turkey. Three power plants - Yatagan, Yenikoy and Gokova, located in Mugla region and operated by the Ministry of Energy and TEAS (Turkish Electricity Authority) - seem to be responsible for polluting the whole region, including the Marmaris Peninsula, the Datca Peninsula, Gocek Bay, "Special Protected Area" Koycegiz, Ortaca and Dalaman, with toxic emissions and acid rain. Reportedly, the area between Yatagan and Yenikoy, which was covered with pine forests and fruit trees before 1982, is now a Mond process open-air coal-mine extending hundreds of thousands of hectares, full of piles of radioactive waste ashes which are contaminating the underground water and soil. Yearly, 700 tons of uranium are discharged in the open piles of ashes. Cases of cancer, asthma/bronchitis, goitre and heart disease as well as miscarriages, loss of hair, and eye, skin and mental diseases among the inhabitants of the area seem to be increasing and apparently, accounts are not kept of medical investigations. Reportedly, in 1993 lawsuits were brought before the Regional (Aydin) Administrative Court in order to stop the environmentally hazardous activities of the three power plants. The Aydin Administrative Court decided to stop them but the Turkish Council of Ministers decided to allow the plants to continue to operate despite the decision of the court.

60. The United Kingdom. ReChem's toxic waste incinerator in Pontypool, south Wales, has been for 20 years the destination of thousands of tonnes of highly toxic wastes, especially polychlorinated biphenyls (PCBs), from all over the world. The plant is close to residential areas; local people complain about dark smoke and noxious smells from the plant whose toxic emissions hang in the stagnant air. Scientific investigations have reported raised levels of PCBs and dioxins around the plant. Reportedly, the Government has refused calls for a public inquiry into the plant and ReChem has stifled public debate.

61. The United Kingdom/Colombia. British Petroleum (BP) seems to be held responsible for collaborating with Colombian soldiers involved in serious violations of human rights: BP allegedly passed on information about local people protesting oil activities to the Colombian military who then arrested or kidnapped them on grounds of being subversives. Reportedly, in the summer of 1996, BP signed an agreement with Colombia's Ministry of Defence to create a batallion of 150 officers and 500 soldiers to monitor construction of a 550-mile-long pipeline; it seems that all oil companies operating in Colombia have to pay a "war tax" to help fund the war against those who want to nationalize Colombia's oil industry. The company is also held responsible for environmental damage ranging from devastating a protected forest, to polluting a river, to damaging bridges and roads that local people use to transport their products to market. Yet, in November 1996 BP decided to urge the Colombian Government to investigate allegations concerning its employees who are supposedly collaborating with the army and its paramilitary allies.

62. United Kingdom/Malaysia. The United Kingdom-based transnational corporation Imperial Chemical Industries (ICI) manufactures and sells paraquat under the trade name Gramoxone and has a formulation plant in Malaysia which witnessed an enormous growth in rubber and oil plantations, which are heavily dependent on herbicides. Paraquat accounts for almost 80 per cent of all

herbicide sales. About 130,000 women, especially young women between the ages of 16 and 25, work as pesticide sprayers on plantations. Reportedly, they work under harsh conditions and many of them never see a doctor, or if they do, their symptoms are often misdiagnosed as flu, heat rash or gastroenteritis whereas acute poisoning among female plantation workers in Malaysia seems to be quite common.

63. United Kingdom/Indonesia. In the first five months of 1993, the United Kingdom allegedly shipped over 700 tonnes - compared with 200 tonnes shipped in 1992 - of lead acid batteries to Indonesia, where IMLI - the largest battery waste importing plant in Indonesia - burns 60,000 tonnes of lead acid batteries each year, threatening the surrounding environment and the health of the nearby community.

64. United Kingdom/South Africa. The British transnational corporation Thor Chemicals announced that it would phase out all mercury-related operations at its Durban plant by the end of 1996, after three Thor executives were charged with culpable homicide and 42 contraventions of safety laws following the death of a worker from suspected mercury poisoning. Apparently, another worker is in a deep coma, one is unable to walk or talk, and a fourth is in hospital. Public pressure pushed the Government to ban the import of toxic wastes, a ban that apparently did not include materials imported for recycling, which is what Thor Chemicals claimed to do. Reportedly, inside Thor's factory today are more workers who have been poisoned by mercury, having been consistently exposed to dangerous levels of mercury, sometimes 20 times higher than the internationally accepted safe limit. Thor employs 60-100 black labourers, most of whom handle a variety of high risk exposure operations without apparently even knowing of the dangers involved. Former Thor workers still suffer from mercury poisoning. Reportedly, workers employed by Thor on a part-time basis as casual labourers were dismissed after they began to suffer symptoms of mercury poisoning. The factory also seems to be the number one suspect in the mercury pollution of the surrounding area.

65. United States. A prevalence of environmental inequities based on socio-economic and racial factors has been reported: of the two factors, race appears to have both an independent and a more important relationship with the distribution of commercial hazardous waste facilities than income. In fact, race is the single best predictor of where commercial hazardous waste facilities will be located, even when other socio-economic characteristics of communities, such as average household income and average value of homes, are taken into account.

66. Nuclear contaminants seem to represent a serious problem throughout many indigenous communities in North America and the Pacific, storage and dumping of nuclear waste being just one method of contamination. Reportedly, in 1995 the Mescalero Apache people voted to refuse the "privatized" nuclear waste of Northern States Power but in a second vote the project passed. The scheduled opening date is 2002. Opponents are trying to stop it. Yet, the major problems of pollution imported onto Indian lands appear to be associated with the toxic dumping of PCBs throughout the western hemisphere as well as pollution as a result of mineral and natural resource exploitation.

67. Reportedly, many maquilas (garment assembly plants) along the Texas-Mexico border, which are often portrayed as clean, light industry, use toxic materials. It seems that undisciplined and illegal disposal of wastes

is not infrequent. These plants allegedly are not even required to provide information to workers or community residents about emissions or chemicals used or stored and numerous incidents have been reported: they include a case of children being intoxicated at a dump in Ciudad Juarez by sniffing green rocks covered with a solvent containing toluene, and a maquiladora that closed and left in an abandoned building a dozen 55-gallon drums of hazardous material. The present state of affairs seems to have improved slightly in comparison to the situation in the last decade.

68. Reportedly, WMX Technologies - Chemical Waste Management's parent company - is considering taking advantage of the North American Free Trade Association (NAFTA) by exporting hazardous waste from the United States to Mexico for disposal there; the company is accused of dumping on communities of colour in the United States, on Indian lands, as well as in developing countries.

69. Reportedly, the United States-based Uniroyal Corp. will continue selling a hazardous pesticide - Propargite - to farmers overseas even though the product has been withdrawn from domestic markets for health and safety reasons. Apparently, the company's decision to withdraw its product from foreign markets will depend on the environmental laws and policies of the importing countries.

70. Reportedly, the use of hundreds of tons of depleted uranium (DU) bullets in the Persian Gulf during Operation Desert Storm (1991) coupled with unexplained illnesses experienced by veterans who had been exposed to numerous potentially toxic substances have focused public attention on a possible link between these illnesses and the health hazards associated with DU munitions. The military use of DU poses threats to both humans and the environment; also, the expense of DU clean-up seems to be immense. Yet, DU munitions are sold in the world arms market and the United States has apparently led in their development, use and commercialization. Approximately 50,000 veterans in the United States and 4,000 in allied countries who served in Operation Desert Storm subsequently suffered from a variety of ailments, usually referred to as the Gulf War Syndrome or Desert Storm Illness.

71. The United States/Argentina. Apparently, the so-called "waste paper" bales exported for recycling from the United States and some European countries to Argentina are basically toxic waste which poses health and safety risks for the workers who have to handle the bales, both through skin contact and through inhalation. Also, there is a more general contamination problem since contact with the material could give rise to a whole range of serious infections. Furthermore, the wastes are not desinfected before being put into pulpers or while inside the pulpers, which causes a further contamination problem since the recycled paper is subsequently used in, among other things, toilet rolls and paper serviettes, and even in food wrappings.

72. The United States/Ecuador and Peru. The oil industry is seen as the biggest destroyer of Ecuador's 13 million hectares of rainforest inhabited by eight groups of indigenous people (Texaco had 330 wells in Ecuador. It has left the country, but PetroEcuador has taken its place). It seems that 1 million hectares of the country's forest have been destroyed and 90 per cent of this destruction is due to the operations of Texaco/PetroEcuador. Inevitably, these operations have affected the health of the people living there. Some 30,000 Ecuadorian victims of Texaco's abuses have banded together

and sued the company in its home State of New York, asking it to stop dumping waste and to invest in new technology. In 1994, Texaco reached an agreement with the Government of Ecuador for the company to remedy any damage caused by its oil drilling operations. The plaintiffs' litigation team then filed a complaint on behalf of approximately 25,000 Peruvians living along the Napo River. In 1995, the judge ordered consolidation of the two suits.

73. The United States/Indonesia and Papua New Guinea. In Indonesia, pollution from Texaco's Caltex operations has been held responsible for killing fish in Siak River tributaries, destroying rubber trees near the streams and causing skin diseases among Sungai Limau villagers. Freeport-McMoRan, a New Orleans-based mining company operating on the western half of the island of New Guinea (Irian Jaya), seems to be responsible for dumping 120,000 tonnes of toxic waste per day into local rivers, thus contaminating local fish and vegetation and causing severe health problems for the people that live near the river. Furthermore, the Amungme, a highland people, seem to have been displaced from their land in a series of forced removals begun after 1973; apparently the estimated 5,000 Amungme and Komoro peoples evicted from the area have received no compensation. Since 1994, the killing or disappearance of 22 civilians has been reported and 15 guerrilla acts seem to have taken place in and around the mine. Apparently, Freeport security cooperated with the Indonesian army during some incidents, including an attack in which three people were killed and five disappeared. In 1996 a $6 billion lawsuit was filed in a United States district court in New Orleans which, reportedly, charges the company with responsibility for a range of human rights and environmental abuses which have had a strong impact on the tribal communities whose natural habitats have been affected.

V. CONCLUSIONS AND RECOMMENDATIONS

74. In her first report to the Commission, the Special Rapporteur carefully noted the main trends in the illicit movement and dumping of toxic products and wastes, and clarified their characteristics as well as their disastrous effects on the enjoyment of human rights, particularly the rights to life and health. The Special Rapporteur also reviewed the legal framework of her mandate, the historical background to the problem, the factors contributing to the development of the phenomenon and the special difficulties encountered by the African and other developing countries. Consequently, the present report focuses primarily on the preliminary results of the analysis of the information transmitted to her concerning particular cases affecting individuals, groups or countries.

75. In order to evaluate the data brought to the attention of the Commission in the present report, the conclusions and observations contained in the first report should be borne in mind.

76. The illicit traffic in toxic and dangerous products and wastes can assume various forms, the principal characteristic being the ability of the persons engaged therein to adapt to the changing international situation. For example, from 1986 to 1988, more than 3.6 million tonnes of waste were apparently dispatched from the OECD countries to other countries purely and simply in order to be dumped with a view to their disposal or permanent storage.

77. In recent years, however, there has been a notable increase in the movement of waste from the developed countries to the developing countries in the form of recycling or recovery operations. According to some sources, 95 per cent of the dangerous wastes forming the subject of transboundary movements between OECD and other countries are intended for recovery operations. In addition to the dangerous recycling operations, such as the installation of incineration and lead recycling plants or the export of highly pollutant industries and technologies, numerous transboundary movements of dangerous wastes for recycling purposes are apparently of a fictitious nature.

78. In the face of international pressure, the waste traffickers resort to fraudulent manoeuvres and even bribery. Enterprises use buffer companies and dangerous wastes are exported, in violation of the legislation of the exporting and importing countries, in the form of material intended for recycling or products forming part of development projects. Humanitarian assistance has also apparently been used as a cover in at least one evident case of attempted export of dangerous products from a wealthy to a poor country.

79. In this regard, at their third meeting in 1995, the States parties to the Basel Convention took a wise decision to amend the Convention in such a way as to prohibit the export of hazardous wastes, even for recycling purposes, from OECD member countries to non-member countries. The ban on recycling is due to enter into force at the end of 1997.

80. The States parties to the Basel Convention unanimously recognized that there was a high risk that transboundary movements of hazardous wastes, especially to developing countries, might not constitute an environmentally sound management of those wastes. In that regard, the amendment that was adopted by consensus should make it possible to rectify some shortcomings and ambiguities through which, in the past, exports of wastes deemed harmful by developing countries, some of which had refrained from acceding to the Convention, were considered as legal. Since that time, there has been a revival of interest in the Convention. By 11 December 1996, 106 States, of which 17 were in the African region, 30 in Asia and the Pacific and 22 in Latin America and the Caribbean, had become parties to the Convention (as compared with 73 in 1994, of which only 9 were African countries).

81. The ban on the export of hazardous products, including those intended for recycling, which has now been imposed by the Basel Convention would remain a dead letter if it were not accompanied by practical measures for the detection of illicit practices. This can be achieved only by strengthening the capacities of the developing countries.

82. Various factors of a legal, economic, social and political nature are contributing to the illicit traffic, transfer and dumping of toxic and dangerous wastes and products in African and other developing countries (see the preliminary report of the Special Rapporteur, E/CN.4/1996/17, paras. 103-115, 149 and 150).

83. In this regard, the promulgation of strict legislation to control transboundary movements of dangerous wastes should be continued and, in particular, encouraged in the developing countries in order to reduce the discrepancies between the national legal norms applied in the developed and the developing countries. International cooperation remains crucial.

84. The developing countries should be provided with legal aid and assistance for the purpose of training their magistrates and agents concerned with a view to the formulation of national legislation that would make it possible to effectively combat the illicit traffic and strengthen national capacities to detect, prevent and punish fraudulent practices.

85. States should develop their penal legislation in this field and introduce administrative, civil and penal sanctions in order to prosecute and punish this illicit traffic. Regional initiatives, such as that of the Council of Europe which is formulating a convention for the protection of the environment through criminal law, should be encouraged. States should develop legislative provisions concerning the civil and criminal liability of individuals and bodies corporate.

86. In the case of transboundary movements of toxic wastes which have proved harmful to residents of a State other than the exporting country, the victims should have access to the administrative and judicial procedures of the exporting country. Non-resident victims should be able to avail themselves of the same means of redress and should enjoy the same treatment as residents. This is all the more necessary since the movement of toxic wastes often assumes a transnational character. Failing such redress, the entities involved in illicit transboundary traffic would be able to contravene the regulations of their country of origin with impunity and benefit from local deregulation.

87. National and international regulations would be ineffective in the absence of efficient control and implementation mechanisms.

88. For its part, the Basel Convention made provision for monitoring mechanisms, including a system for the transmission of information by States parties in accordance with article 13. This arrangement, which is largely voluntary, is only partly enforced. The States parties seem hesitant to report incidents and to notify the Secretariat of the Convention of illicit movements of toxic wastes. A working group is studying the questions relating to the establishment of a mechanism to monitor the application of the Convention and compliance therewith. It is to give an account of its conclusions to the fourth session of the Conference of States Parties. Hopefully, the Convention's monitoring system will be strengthened following that examination.

89. The role of non-governmental organizations and associations, local communities and associations, trade unions, workers and victims should be overt and should be consolidated. Freedom of expression, freedom of association and access to effective means of redress could contribute, in conjunction with the efforts made by governmental authorities, to effectively combating transboundary movements of toxic and dangerous wastes and products which are detrimental to the environment, to development and to the lives and health of the persons who are victims thereof. However, the communications addressed to the Special Rapporteur show that, far from being deemed complementary, that role is, if not thwarted, at least underestimated.

90. Nevertheless, the communications dealt with in this report remain preliminary and the Special Rapporteur cannot draw conclusions therefrom before the governmental replies and comments have been analysed. The Special Rapporteur would appreciate any cooperation received in this regard.

91. As requested in the Commission's resolutions concerning her mandate, and through the communications that she has received, the Special Rapporteur has endeavoured primarily to identify the country of origin of illicit movements and/or the countries to which the corporations involved belong and, at the same time, to list the countries of destination of the toxic wastes and dangerous products. In cases in which the country of origin has not been identified, only the country of destination or export is mentioned. Wherever possible, the number and type of the victims, as well as the violations of human rights to which they were apparently subjected, have also been indicated. In some cases, the information submitted to the Special Rapporteur did not permit such identification.

92. Finally, in most of the communications dealt with, it was possible to determine the name and, as appropriate, the country of origin of the transnational corporation involved. However, objective reasons relating to shortage of time and staff made it impossible, at this stage, to produce a list of the countries and transnational corporations engaged in the illicit dumping of toxic and harmful products and wastes in the developing countries, particularly as the communications that were examined seemed to refer to only a very small proportion of the transboundary flow of toxic wastes and dangerous products. In view of the workload and the research that such a task involves, the Special Rapporteur wishes to point out that such a list could not be produced unless she were provided with adequate human resources.

93. The Special Rapporteur also wishes to re-emphasize the importance of in situ visits for the discharge of her mandate. Consequently, she hopes that, as in the case of the Commission's other thematic rapporteurs, the financial resources appropriated to that end will be released in order to enable her to fulfil her mandate.